Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1976

No. 76-830

DAVID W. MEYERS and PAUL L. KEGEL,
Appellants,

vs.

KEN W. ROBERTS, COUNTY AUDITOR OF NOBLES COUNTY, MINNESOTA,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

APPELLEE'S MOTION TO AFFIRM OR DISMISS

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ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

APPELLEE'S MOTION TO AFFIRM OR DISMISS

Appellee moves the Court to dismiss this appeal or, alternatively, to affirm the judgment of the Minnesota Supreme Court in this matter on the grounds that the appeal does not present a substantial federal question requiring further argument, and was correctly decided below.

OPINIONS BELOW

The opinion of the Minnesota Supreme Court in this case is reported at 246 N.W.2d 186 and set out at pages 1a-13a of Appellants' Jurisdictional Statement. The unreported opinion of the Nobles County District Court is set out at pages 14a-18a of Appellant's Jurisdictional Statement.

JURISDICTION

The jurisdictional requirements are adequately set forth in the Jurisdictional Statement.

QUESTION PRESENTED

1. Does Article VII, § 6 of the Minnesota Constitution violate Amendment XIV, § 1, or Amendment XXVI, § 1 of the United States Constitution?

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment XIV, § 1 of the United States Constitution provides:

> . . . No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.

Amendment XXVI, § 1 of the United States Constitution provides:

> The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Article VII, § 6 of the Minnesota Constitution provides:

> Every person who by the provisions of this article shall be entitled to vote at any election and is twenty-one years of age shall be eligible to any office which now is, or hereafter shall be, elective by the people in the district wherein he shall have resided thirty days previous to such election, except as otherwise provided in this Constitution, or the Constitution and law of the United States.

STATEMENT

Appellee agrees with the appellants' rendition of the stipulated facts of this case.

ARGUMENT

Article VII, §6 of the Minnesota Constitution requires office holders in Minnesota, with certain exceptions, to be eligible voters, 21 years of age or older, and to reside in the district from which they are elected for 30 days. Appellant Meyers was not eligible to hold the office of Nobles County Court Commissioner under this provision because he was not 21 years old when he was elected or when he would have assumed office. In this appeal, appellants contend that this age requirement violates both appellant Meyers' right to hold office and appellant Kegel's right to vote under the Fourteenth and Twenty-Sixth Amendments to the United States Constitution. Appellee submits that the arguments advanced by appellants, whether considered from the vantage point of the right to hold office or the right to vote, are wholly without merit and that the decision of the Minnesota Supreme Court in this case is correct. This Court should therefore dismiss the appeal or, alternatively, affirm the decision below.

I. THE AGE REQUIREMENT OF THE MINNESOTA CONSTITUTION, ARTICLE VII, SECTION 6, DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE.

The preliminary step in any Equal Protection case is to decide what standard the attacked provision should be judged under. In cases affecting "fundamental interests", the provision should be examined under the so-called "compelling state interest" test. In other cases, the provision should be judged under the "rational relationship" test. *Shapiro v. Thompson*, 394 U.S. 618 (1968); *Dunn v. Blumstein*, 405 U.S. 134 (1972).

This Court has clearly held that the right to run for public office is not a fundamental right, and the strict scrutiny test should therefore not apply to this aspect of the case. *Bullock v. Carter*, 405 U.S. 134 (1972).[1]

In cases involving the right to cast a ballot a further delineation must be made in order to decide upon the appropriate standard for review.

> [I]f a challenged state statute *grants the right to vote to some bona fide residents* of requisite age and citizenship and *denies the franchise to others*, the Court must determine whether the exclusions are necessary to promote a compelling state interest.

Kramer v. Union Free School District (emphasis added), 395 U.S. 621, at 627 (1969). If, on the other hand, the challenged provision does not disenfranchise some voters, but only impedes their right to vote for a particular candidate or candidates, it must only satisfy the rational relationship test. *Lubin v. Panish*, 415 U.S. 709 (1974); *Bullock v. Carter, supra.*

[1] *See also*: Adams v. Sikew, 511 F.2d 700 (5th Cir. 1975); Blassman v. Markworth, 359 F. Supp. 1 (N.D. Ill. 1973); Wade v. Waller, 402 F. Supp. 922 (N.D. Miss. 1975); Human Rights Party v. Secretary of State for Michigan, 370 F. Supp. 921 (E.D. Mich. 1973), *aff'd.* 414 U.S. 1058 (1973).

Here, there has been no restriction placed on appellant Kegel's right to vote. The only damage done to his franchise is that the candidate he favors is ineligible to hold office.[2] The case should therefore be judged under the rational relationship standard.

The Minnesota Supreme Court found that a rational relationship did exist between the challenged constitutional provision and a legitimate state interest in this case.

> Minnesota has a legitimate interest in assuring that those who hold public office possess maturity, experience, and competence. Virtually the only way to accomplish this objective is to set a minimum age for holding office. It would not be feasible to conduct a hearing on the maturity, experience, and competence of each aspirant to public office, and such an individualized procedure might well run afoul of other constitutional guarantees. Having concluded that the establishment of a minimum age is necessary to insure the fitness of those who hold office in Minnesota, it follows that the attending discrimination between those candidates who are over the minimum age and those aspirants to office who are younger than the minimum age is reasonably necessary to the accomplishment of legitimate state objectives.

[2] A similar sort of restriction would exist if the candidate appellant Kegel favored were dead, or had a criminal record, or lived outside the election district.

(Pages 5a-6a of the Jurisdictional Statement.) Appellants do not dispute this conclusion; instead, they argue that while Article VII, § 6, may satisfy the rational relationship test, it cannot satisfy a more narrow standard.[3] However, as previously demonstrated, there has been no significant limitation placed on the right to vote in this case, and the more narrow standard of review demanded by appellants is therefore inapplicable.

Finally, this Court has recently recognized that the rational relationship test applies to cases of age discrimination. *See*: *Massachusetts Board of Retirement v. Murgia*, —— U.S. ——, 49 L.Ed.2d 520 (1976); *Whitehead v. Westbrook*, 423 U.S. 962 (1975).[4]

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[3] Jurisdictional Statement, pp. 11-12.

[4] Appellants try to distinguish Whitehead, which upheld an Arkansas statute making 30 the minimum age for holding a city office, on the basis of the phrasing of the questions presented. See Jurisdictional Statement, p. 20, and 43 U.S.L.W. 3109 (Sup. Ct. Ed., Aug. 26, 1975). While the case is perhaps different as a matter of form, as a matter of substance it is indistinguishable from this one, and the Court's summary affirmance in Whitehead should dictate a similar result here. Hicks v. Miranda, 422 U.S. 332 (1975).

II. ARTICLE VII, § 6, OF THE MINNESOTA CONSTITUTION DOES NOT VIOLATE THE TWENTY-SIXTH AMENDMENT.

The Twenty-Sixth Amendment guarantees the right to vote to every United States citizen eighteen years of age and older and not otherwise ineligible. Its terms plainly do not guarantee those same persons the right to hold public office. Yet appellants in this case contend that the amendment does do that on the basis that its use of the term "age" refers to the age of candidates for office as well as the age of the voters themselves.

Appellants offer no significant support for their novel interpretation of this amendment. As a matter of fact, what case law there is on the amendment denies any correlation between its protection of the right to vote and a right to hold public office. *Blassman v. Markworth, supra; Jude v. Erdahl*, 296 Minn. 200, 207 N.W.2d 715 (1973); *Spencer v. Board of Education*, 39 App. Div. 2d 399, 334 N.Y.S.2d 783, *aff'd.*, 31 N.Y.2d 810, 339 N.Y.S.2d 461 (1972).

The Twenty-Sixth Amendment does express a recent national policy favoring political participation by 18-21 year olds. However, it does not guarantee that participation through the process of holding public office. Such a guarantee, if it is to be made, should come through legislative action or by the process of constitutional amendment, not through judicial action.

CONCLUSION

The age requirement of the Minnesota Constitution for holding public office does not unconstitutionally impede the right to vote or the right to hold public office. It is a rational means of furthering a legitimate state objective—assuring that office holders possess certain minimal qualifications. The decision of the Minnesota Supreme Court on this subject was therefore entirely correct and this Court should therefore affirm that decision or, alternatively, dismiss this appeal for want of a substantial federal question.

Respectfully submitted,

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